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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SIMONE BLANCHETTE, Derivatively on
Behalf of Nominal Defendant PAYSIGN, INC.,

Plaintiff,

v.

MARK NEWCOMER, DANIEL H. SPENCE,
DAN R. HENRY, QUINN WILLIAMS, JOAN
M. HERMAN, BRUCE A. MINA, DENNIS
TRIPLETT, and MARK ATTINGER,

Defendants,

and

PAYSIGN, INC.,

Nominal Defendant.

Case No.

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1441, 1446**

Defendants MARK NEWCOMER, DANIEL H. SPENCE, DAN R. HENRY, QUINN WILLIAMS, JOAN M. HERMAN, BRUCE A. MINA, DENNIS TRIPLETT, and MARK ATTINGER, and Nominal Defendant PAYSIGN, INC. (“Paysign”) (collectively, “Defendants”), by and through their counsel, the law firm of GREENBERG TRAURIG, LLP, file this Notice of Removal Pursuant to 28 U.S.C. §§ 1441 & 1446 from the District Court of Clark County, Nevada, to the United States District Court for the District of Nevada (the “Notice”). In support of removal, Defendants state as follows:

I. BACKGROUND

1. The above-entitled action was commenced in the Eighth Judicial District Court, in and for Clark County, Nevada, Case No. A-23-878793-B, and is pending in that Court (“State Court Action”).

2. Simone Blanchette (“Plaintiff”) commenced the State Court Action by filing a Verified Shareholder Derivative Complaint (“Complaint”) on October 2, 2023. (A copy of the Complaint is attached as **Exhibit A.**)

3. Defendants accepted service of the Complaint and Summons on October 5, 2023.

4. No further substantive or material filings have been made in the State Court Action.

5. The Complaint asserts claims for: (1) Violations of § 10(b) of the 1934 Securities Exchange Act, 15 U.S.C. § 78(j), and Rule 10b-5, 17 C.F.R. § 240.10b-5; and (2) derivative claims, supposedly brought on behalf of Paysign, for breaches of fiduciary duty, unjust enrichment, and gross mismanagement.

II. REMOVAL IS PROPER AND MANDATED UNDER FEDERAL QUESTION JURISDICTION

6. Defendants base removal on 28 U.S.C. § 1441(a), which permits removal from state court of any civil action “brought in a State Court of which the district courts have original jurisdiction” This is a civil action in which this Court has original jurisdiction under 28 U.S.C. § 1331, which provides that the district courts have original jurisdiction over all civil actions which arise under the Constitution, laws, or treaties of the United States. In Count One of the Complaint, Plaintiff assert a claim under “§ 10(b) of the Exchange Act, 15 U.S.C. § 78(j), and Rule 10b-5, 17 C.F.R. § 240.10b-5” – a claim arising under federal law.

7. “Section 27 of the Securities Exchange Act of 1934 (Exchange Act) ... grants federal district courts exclusive jurisdiction ‘of all suits in equity and actions at law brought to enforce any liability or duty created by [the Exchange Act] or the rules or regulations thereunder.’ § 78aa(a).” *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 376–77 (2016). This statute “confers federal jurisdiction when an action is commenced in order to give effect to an Exchange Act requirement.” *Id.* at 381; *see also Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S.

367, 370 (1996) (“Section 27 of the Exchange Act confers exclusive jurisdiction upon the federal courts for suits brought to enforce the Act or rules and regulations promulgated thereunder.”); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1197 (9th Cir. 1988) (Section 10(b) claims are subject to “exclusive federal jurisdiction pursuant to 15 U.S.C. § 78aa”).

III. CONCLUSION AND PROCEDURAL REQUIREMENTS

8. Federal law requires that this action be removed to this Court.

9. A true and correct copy of this Notice of Removal is being served on all named parties that have lodged an appearance in the State Court Action and filed with the Clerk of the Eighth Judicial District Court.

10. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days after service of the Complaint.

11. This Court is the proper venue for the removal of this action because it is the district court of the United States for the district and division embracing the place where the action is pending. *See* 28 U.S.C. § 1441(a).

12. In accordance with 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendants will give written notice of the removal to all adverse parties and will file a copy of this Notice of Removal with the State Court.

13. While Defendants do not believe it is relevant to the fact that removal is required here as a matter of statute, as a practical matter Defendants wish to inform the Court of the following facts: (1) there is an existing securities class action case alleging substantially identical facts pending in U.S. District Court for the District of Nevada entitled, *In re Paysign, Inc. Securities Litigation*, Case No.: 2:20-cv-00553-GMN-DJ, where the Court has already appointed lead plaintiff and lead counsel pursuant to the requirements of the Private Securities Litigation Reform Act of 1995; and (2) separately, there is an existing derivative lawsuit alleging substantially identical facts pending in U.S. District Court for the District of Nevada entitled *Andrzej Toczek vs. Mark R. Newcomer, et al.*, Case No.: 2:20-cv-01722-JCM-NJK,

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1 Based on the above, Defendants remove the State Court Action to this Court.

2 DATED this 10th of October, 2023.

3 **GREENBERG TRAURIG, LLP**

4
5 /s/ Jacob D. Bundick

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that, on the 10th day of October, 2023, a true and correct copy of the foregoing ***NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1441, 1446*** was filed electronically via the Court's CM/ECF system. Notice of filing will be served on all parties by operation of the Court's EM/ECF system, and parties may access this filing through the Court's CM/ECF system.

/s/ Andrea Flintz

An employee of Greenberg Traurig, LLP

LIST OF EXHIBITS

1. Exhibit A -- Complaint